

रजिस्टर्ड नं० बी० ६७



राजपत्र, हिमाचल प्रदेश

(असाधारण)

हिमाचल प्रदेश राज्यशासन द्वारा प्रकाशित

शिमला, शनिवार, २८ सितम्बर, १९६८/६ अश्विन, १८९०

GOVERNMENT OF HIMACHAL PRADESH
LAW DEPARTMENT
NOTIFICATION

Simla-2, the 19th July, 1968

No. 6-3/68-LR.—The Himachal Pradesh Motor Spirit (Taxation of Sales) Bill, 1968 (No. 3 of 1968) after having received the assent of the President on the 7th May, 1968 under sub-section (2) of section 25 of the

१०२४ असाधारण राजपत्र, हिमाचल प्रदेश, २८ सितम्बर, १९६८/६ आश्विन, १८९०

Government of Union Territories Act, 1963 (Act No. 20 of 1963) is hereby published in the Rajpatra, Himachal Pradesh as Act No. 10 of 1968.

JOSEPH DINA NATH,
Under Secretary (Judicial).

Act No. 10 of 1968

THE HIMACHAL PRADESH MOTOR SPIRIT (TAXATION OF SALES) ACT, 1968

AN
ACT

to provide for the levy of a tax on the retail sale of motor spirit.

BE it enacted by the Legislative Assembly of the Union territory of Himachal Pradesh in the Eighteenth Year of the Republic of India as follows:—

1. (1) This Act may be called the Himachal Pradesh Motor Spirit (Taxation of Sales) Act, 1968.

Short title
and com-
mencement.

(2) It shall come into force at once.

2. In this Act unless there be anything repugnant in the context,—

Definitions.

(a) “Government” means the Administrator of the Union territory of Himachal Pradesh;

(b) “magistrate” means any magistrate exercising Powers not less than those of a magistrate of the second class;

(c) “motor spirit” means any inflammable hydrocarbon (including any mixture of hydrocarbons or any liquid containing hydrocarbon) which is ordinarily used for providing reasonably efficient motive power for any form of motor vehicle;

(d) “penalty” means a penalty imposed under section 9 of this Act;

(e) “Petrol Taxation Officer” means such officer not below the rank of an Assistant Excise and Taxation Officer, as may be appointed by the Government to discharge the duties of a Petrol Taxation Officer under this Act with reference to any particular area;

(f) “prescribed” means prescribed by Rules made under this Act;

(g) “retail dealer” means any person who, on commission or otherwise, sells any motor spirit to a consumer or to any other person for any purpose other than re-sale, or keeps any motor spirit for sale to consumer or to any other person for purposes other than re-sale;

(h) “retail sale” means a sale by a retail dealer of any motor spirit to a consumer or to any other person for any purpose other than re-sale;

(i) “sale” and “sell” include exchange, barter and also the consumption of motor spirit by the retail dealer himself;

(j) “vehicle” includes any carriage or conveyance used on land or in water or air;

(k) “Excise and Taxation Commissioner” means the person for the time being appointed by the Government to perform all or any of the functions and exercise all or any of the powers of the Excise and Taxation Commissioner; and

(l) “Deputy Excise and Taxation Commissioner” means the person for the time being appointed by the Government to perform all

or any of the functions and exercise all or any of the powers of the Deputy Excise and Taxation Commissioner in any specified local area.

CHAPTER II

TAXATION

Imposition of tax.

3. (1) There shall be levied and paid to the Government on all retail sales of motor spirit a tax at the rate of seven paise for each litre of motor spirit.

(2) The Government may by notification in the Official Gazette, exempt any retail sales of motor spirit from liability to pay tax under the Act, either wholly or partially and on such conditions as it may think fit to impose.

Recovery of taxes as arrears of land revenue.

4. When the payment of any tax or penalty under this Act falls due, the amount may be recovered as if it were an arrear of land revenue.

Power to determine certain questions.

5. (1) Any question as to whether a tax or penalty is recoverable under this Act, the person from whom it is due and the amount so recoverable shall be determined by the Petrol Taxation Officer for the area where the sale takes place.

(2) No such order shall be made final until an opportunity has been given to any person concerned to appear in person or by duly authorised agent before the Petrol Taxation Officer, but once the order has been made final a certificate given under the hand of the Petrol Taxation Officer shall, subject to the provisions of this Act with regard to appeal, review and revision, be final and conclusive proof both as to the amount of the tax or penalty which is due and as to the person from whom it is due.

CHAPTER III

LICENSING OF RETAIL DEALERS

No person to trade without a licence.

6. After the expiry of a period of two months from the commencement of this Act no person shall carry on business as a retail dealer unless he is in possession of a valid licence.

Grant of licence.

7. (1) Except as provided hereunder, a licence shall be granted to any person applying therefor in the prescribed form to the Petrol Taxation Officer on payment of a fee of not more than twenty-five rupees, as may be prescribed.

(2) Every such licence shall be valid without renewal only up to the thirty-first day of March following the date on which it is granted, but may be renewed annually on payment of a fee not more than ten rupees.

(3) The grant or renewal of a licence may be refused if any previous licence of the applicant or of any person with whom the applicant has been working as a partner has been cancelled or if the applicant or any person with whom he has been working as a partner has been convicted of any offence relating to motor spirit or if the Petrol Taxation Officer is satisfied that the application has been made only for the purpose of enabling any person to carry on business as a retail dealer without a licence.

(4) No licence under this Act, except in the case of a licence for the retail sale of powerine or diesel oil, shall be granted to any person who does not hold a licence for the storage of dangerous petroleum under the Petroleum

3 of 1934

Act, 1934, and if any such licence granted under that Act is cancelled, suspended or is not renewed, any licence granted under this Act to the holder thereof shall be deemed to be cancelled, suspended, or not renewed as the case may be.

(5) If an application for the renewal of a licence under this Act is made within such time before its expiry as may be prescribed by the Government, the holder of the licence shall be deemed to be in possession of a valid licence until the licence is renewed or until he is informed that the renewal of the licence has been refused.

8. (1) The Petrol Taxation Officer may, after giving the licensee an opportunity to be heard, suspend or cancel a licence for a breach of any of the conditions which may be prescribed as the conditions subject to which a licence is granted.

Suspension or cancellation and restoration of a licence.

(2) A licensee shall not be entitled to any compensation for the suspension or cancellation of his licence under the foregoing sub-section.

(3) A licence cancelled or suspended under this section may be restored by the Petrol Taxation Officer on payment of such fee as may be prescribed.

CHAPTER IV

PENALTIES AND POWERS TO PREVENT EVASION

9. If any tax due under this Act is not paid within the time fixed by notice issued in the prescribed manner, the Petrol Taxation Officer may impose a penalty not exceeding the amount of the tax due, in addition to the payment of the tax:

Imposition of penalty.

Provided that no such penalty shall be imposed unless the person on whom it is to be imposed or his duly authorised agent is given an opportunity of being heard by the Petrol Taxation Officer.

10. Whoever contravenes the provisions of section 6 shall be punishable with fine which may extend to one thousand rupees or to a sum equal to double the amount of the tax due in respect of the sale of any motor spirit conducted by or on behalf of such person, whichever is greater.

Punishment for unauthorised sale.

11. (1) A magistrate may issue a warrant—

Issue of warrants.

(a) for the arrest of any person whom he has reason to believe to have committed an offence punishable under this Act; or

(b) for the search, whether by day or by night, of any building, vessel, vehicle or place in which he has reason to believe that any motor spirit is sold or is kept for sale.

5 of 1898

(2) All warrants issued under this section shall be executed in accordance with the provisions of the Code of Criminal Procedure, 1898 by a police officer or if the officer issuing the warrant deems fit, by any other person.

5 of 1898

12. All searches made under the provisions of this Act shall be made in accordance with the provisions of the Code of Criminal Procedure, 1898.

Searches how made. Procedure for arrest without warrant.

5 of 1898

13. The provisions of section 61 of the Code of Criminal Procedure, 1898, shall apply to all arrests without warrant made under the provisions of this Act.

Duty of certain persons to report offences, etc.,

14. Every person employed by the Government, by any local body or by the Court of Wards, every village headman, village accountant and village watchman shall give immediate information to the Deputy Excise and Taxation Commissioner of the commission of any offence or of the intention or preparation to commit any offence punishable under this Act which may come to his knowledge.

15. (1) Every officer of the Excise and Taxation Department not below

Power of

investigation.

such rank as may be prescribed shall, within the area for which he is appointed, have power to investigate all offences punishable under this Act.

(2) Every such officer shall, in the conduct of such investigation, exercise the powers conferred by the Code of Criminal Procedure, 1898, upon an officer in charge of a police station for the investigation of a cognizable offence.

(3) Every such officer may enter at any reasonable time the premises of any retail dealer and with or without notice examine and take copies or extracts from any account books or registers for the purpose of testing the accuracy of any prescribed returns or of informing himself as to any particulars regarding which information is required for the purposes of this Act or of any rules thereunder.

(4) Every such officer may detain and arrest any person whom he has reason to believe to be guilty of any offence punishable under this Act.

Offences to be bailable
Punishment for vexatious search or arrest.

16. All offences punishable under this Act shall be bailable.

17. Any officer or person exercising powers under this Act who—

(a) without reasonable ground of suspicion, enters or searches, or causes to be entered or searched, any building, vessel, vehicle or place; or

(b) vexatiously and unnecessarily detains, searches or arrests any person,

Punishment for vexatious delay.

shall on conviction be punishable with fine which may extend to five hundred rupees.

18. Any officer or person exercising powers under this Act who vexatiously and unnecessarily delays forwarding to a magistrate any person arrested under this Act and not released by him on bail shall on conviction be punishable with fine which may extend to two hundred rupees.

Power to compound offences.

19. (1) The Deputy Excise and Taxation Commissioner concerned may accept from any person who has committed an offence punishable under this Act, by way of composition of such offence, a sum of money not exceeding one thousand rupees or a sum equal to double the amount of the tax payable under section 3 in respect of any sale conducted by such person, whichever is greater.

(2) On the payment of such sum of money to the Deputy Excise and Taxation Commissioner concerned, the accused person, if in custody, shall be discharged, and no further proceedings shall be taken against such person in respect of such offence.

CHAPTER V

MISCELLANEOUS

Powers.

20. The powers of the Government to appoint any person or to invest any person with any authority prescribed by this Act may be exercised by the Excise and Taxation Commissioner, subject to the orders of the Government.

Protection of persons acting in good faith and limitation of suits and prosecution.

21. (1) Any civil or criminal proceedings instituted against any person in respect of any act done or purporting to be done in the exercise of any powers or the execution of any duty under this Act shall be dismissed unless the court is satisfied that the act complained of was not done in good faith.

(2) No suit shall be instituted against the Government and no prosecution or suit shall be instituted against any person in respect of anything done or intended to be done, under this Act, unless the suit or prosecution has been instituted within six months from the date of the act complained of.

22. (1) Any person aggrieved by any order under this Act or rules made thereunder other than an order made by a criminal court may appeal to the Deputy Excise and Taxation Commissioner concerned if such order is passed by any other officer or person exercising powers under this Act.

Appeal and revision.

(2) Every order passed in appeal under this section shall, subject to the powers of revision conferred by sub-section (3), be final.

(3) The Excise and Taxation Commissioner may, at any time, call for and examine the record of any order of, or the proceedings recorded by, any officer or person for the purpose of satisfying himself as to the legality or propriety of such order passed by, or as to the regularity of such proceedings of such officer or person and may pass such order in reference thereto as he thinks fit.

23. Any order made under this Act, other than an order made by a criminal court, may be reviewed by the officer making it or his successor, provided that before any order is made, any person likely to be affected adversely by such order shall be given opportunity of being heard.

Review.

24. (1) The Government may make rules to carry out all or any of the purposes of this Act.

Power to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, the Government may make rules for the purpose of—

- (a) the recovery of the tax leviable under section 3, including the fixing of the time when the tax is to be paid.
- (b) the fixing of licence fees.
- (c) imposing on retail dealers the duty of furnishing returns and of keeping records and registers of stocks and daily sales prescribing forms for such returns and registers of stocks and daily sales and the particulars to be contained therein, respectively, and the manner in which the same are to be verified and all such other conditions thereof as may be necessary and prescribing a period within which such returns must be submitted.
- (d) prescribing the localities in which motor spirit may be sold, the assessment of tax and the issue of notices requiring payment and for the recovery of unpaid tax.
- (e) providing for or restricting the assignment or transfer of licences and the manner in which licences granted to firms are to operate during the period of, or on the dissolution of a partnership.
- (f) prescribing the arrangements to be made when a licensee dies or becomes subject to a legal disability, the period during which, and the persons by whom, the business of such a licensee may be carried on without a licence.
- (g) requiring the production of licences on demand, and
- (h) prescribing the period, which shall not be less than one month from the date of the order appealed against, within which an appeal under section 22 of the Act may be presented; and prescribing the manner in which such appeal shall be presented.

(3) In making any rule, Government may provide that a breach thereof shall be punishable with fine which may extend to 100 rupees, and, where the breach is a continuing one, with further fine which may extend to 20 rupees for every day after the first day during which the breach has continued.

(4) All rules made under this Act shall be subject to the condition of previous publication.

Repeal and
saving.

25. (1) The Punjab Motor Spirit (Taxation of Sales) Act, 1939 as applied to Himachal Pradesh by the Himachal Pradesh (Application of Laws, Order, 1948 and the Punjab Motor Spirit (Taxation of Sales) Act, 1939 as in force in the territories added to Himachal Pradesh under section 5 of the Punjab Re-organisation Act, 1966 are hereby repealed.

1 of 1939

(2) Notwithstanding such repeal, anything done or any action taken including any orders, notifications issued or rules made in exercise of the powers conferred by or under any of the repealed Acts shall, to the extent of being consistent with the provisions of this Act, be deemed to have been done or taken in exercise of the powers conferred by or under this Act.

31 of 1966